

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

UNITED STATES OF AMERICA

v.

DARYL G. BANK and  
BILLY J. SEABOLT,

Defendants.

CRIMINAL ACTION NO.  
2:17cr126

\*\* JURY TRIAL - DAY 19 \*\*

EXCERPT TRANSCRIPT OF PROCEEDINGS  
**(Jury Instructions)**

Norfolk, Virginia

April 29, 2021

BEFORE: THE HONORABLE RAYMOND A. JACKSON, and a jury  
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE

By: Andrew C. Bosse  
Melissa E. O'Boyle  
Elizabeth M. Yusi  
Assistant United States Attorneys  
Counsel for the United States

ZOBY & BROCCOLETTI

By: James O. Broccoletti  
Counsel for Defendant Daryl G. Bank

EMILY M. MUNN, P.C.

By: Emily M. Munn  
Counsel for Billy J. Seabolt

1                                   \* \* \* \* \*

2                   (The jury entered the courtroom.)

3           THE COURT: Good morning, ladies and gentlemen.

4           Let the record reflect that all the jurors are  
5 present this morning. Does counsel agree?

6           MS. O'BOYLE: Yes, Your Honor.

7           MR. BROCCOLETTI: Yes, sir.

8           MS. MUNN: Yes, Your Honor.

9           THE COURT: Ladies and gentlemen, you have heard the  
10 evidence in this case. You have heard the closing arguments,  
11 and now you are at the point where you will receive  
12 instructions from the Court about what law you will apply to  
13 these facts in reaching your verdict.

14           Now, the Court will be reading you instructions.  
15 These instructions are indexed, double-spaced, capitalized,  
16 and numbered, so you can go back and check any instruction  
17 the Court reads to you, if you have any issues in the jury  
18 room.

19           At the end of the reading, the jury instructions  
20 will be given to you, along with the exhibits, and you will  
21 be able to retire to the jury room to deliberate. When the  
22 Court finishes the instructions, it will be excusing four of  
23 you, because only 12 can deliberate.

24           But while I excuse four of you, you cannot discuss  
25 this case or do anything until a verdict has been returned.

1 So you may go home, but you are going to have to check to see  
2 if a verdict has come in, because if we have an emergency, it  
3 may be necessary to recall one of the four who has been  
4 excused to participate in deliberations.

5 So remember, do not discuss the case if you are  
6 among those who are excused until you've checked with the  
7 clerk to be sure this case has been concluded.

8 With that, we're going to get started with these  
9 instructions. It will probably take about an hour, maybe an  
10 hour and 15 to read all of this, but the law requires that I  
11 read it to you. So please listen, and you will be in good  
12 shape.

13 Now that you've heard all of the evidence, it is my  
14 duty to give you the instructions of the Court concerning the  
15 law applicable to this case.

16 It is your duty as jurors to follow the law as the  
17 Court shall state it to you and apply the law to the facts as  
18 you find them from the evidence in the case.

19 Now, ladies and gentlemen, counsel may quite  
20 properly have referred to some of the governing rules of law  
21 in their arguments. If, however, any difference appears to  
22 you between the law as stated by counsel and that stated by  
23 the Court in these instructions, you, of course, are to be  
24 governed by the instructions as given by the Court.

25 You are not to single out one instruction alone as

1 completely stating the law but must consider the instructions  
2 as a whole. Neither are you to be concerned with the wisdom  
3 of any rules of law stated by the Court.

4           Regardless of any opinion you may have as to what  
5 the law is or ought to be, it would be a violation of your  
6 sworn duty to base a verdict upon any view of the law other  
7 than that given in the instructions of the Court, just as it  
8 would also be a violation of your sworn duty as judges of the  
9 facts to base a verdict upon anything other than the evidence  
10 in the case.

11           In deciding the facts of this case, you must not be  
12 swayed by sympathy for any party nor bias or prejudice or  
13 favor as to any party. Our system of law does not permit  
14 jurors to be governed by prejudice, sympathy, bias,  
15 guesswork, or speculation.

16           Justice through trial by jury must always depend  
17 upon the willingness of each individual juror to seek the  
18 truth as to the facts from the same evidence presented to all  
19 the jurors and to arrive at a verdict by applying the same  
20 rules of law as given in the instructions of the Court.

21           This is Instruction Number 2:

22           The evidence in this case consists of the sworn  
23 testimony of the witnesses, regardless of who may have called  
24 them; all exhibits received in evidence, regardless of who  
25 may have produced them; and all facts which have been

1 admitted or stipulated.

2 Statements and arguments of counsel are not evidence  
3 in the case unless made as an admission or stipulation of  
4 fact. Now, when the attorneys on both sides stipulate or  
5 agree as to the existence of a fact, however, you must,  
6 unless otherwise instructed, accept the stipulation as  
7 evidence and regard that fact as proved.

8 And there were stipulations in this case, and the  
9 Court did not instruct you to disregard any stipulation.

10 Any evidence as to which an objection was sustained  
11 by the Court and any evidence ordered stricken by the Court  
12 must be entirely disregarded.

13 Anything you may have seen or heard outside the  
14 courtroom is not evidence. It must be entirely disregarded.

15 You are to consider only the evidence in the case.  
16 In your consideration of the evidence, however, you are not  
17 limited to the bald statements of the witnesses. In other  
18 words, you are not limited solely to what you see and hear as  
19 the witnesses testify. You are permitted to draw, from facts  
20 that you find have been proved, such reasonable inferences  
21 you feel are justified in light of experience.

22 Instruction Number 3: Recordings of conversations  
23 have been received in evidence and have been played for you.  
24 Typewritten transcripts of these recorded conversations have  
25 been furnished to you solely for your convenience in

1 assisting you in following the conversation or in identifying  
2 the speakers.

3           Number 4: A separate crime is charged in each count  
4 of the indictment. Each charge and the evidence pertaining  
5 to it should be considered separately by the jury. The fact  
6 that you may find a defendant guilty or not guilty as to one  
7 of the offenses charged should not control your verdict as to  
8 any other offense charged.

9           Instruction Number 5: You heard evidence that  
10 Raeann Gibson and Roger Hudspeth pleaded guilty to charges  
11 arising from the events that are the subject of this trial.  
12 You must not consider Raeann Gibson and Roger Hudspeth's  
13 guilty pleas as any evidence of the defendants' guilt.  
14 Raeann Gibson and Roger Hudspeth's decisions to plead guilty  
15 were personal decisions about their own guilt. You should  
16 disregard Raeann Gibson and Roger Hudspeth's guilty pleas  
17 completely when considering the defendants' guilt or  
18 innocence.

19           You should gave such testimony the weight you  
20 believe it deserves, keeping in mind that it must be  
21 considered with caution and great care.

22           Instruction number 6: So while you should consider  
23 only the evidence in the case, ladies and gentlemen, you are  
24 permitted, again, to draw such reasonable inferences from the  
25 testimony and exhibits as you feel are justified in light of

1 common experience. In other words, you may make deductions  
2 and reach conclusions which reason and common sense lead you  
3 to draw from the facts which have been established by the  
4 testimony and evidence in the case.

5 You may also consider direct and circumstantial  
6 evidence. As I told you in the beginning, direct evidence is  
7 the testimony of one who asserts actual knowledge of a fact,  
8 such as an eyewitness. And circumstantial evidence is proof  
9 of a chain of facts and circumstances indicating either the  
10 guilt or the innocence of the defendant.

11 The law makes no distinction between the weight to  
12 be given either direct or confidential evidence. It requires  
13 only that you weigh all of the evidence and be convinced of  
14 the defendant's guilt beyond a reasonable doubt before he can  
15 be convicted.

16 Instruction Number 7: There are people whose names  
17 you have heard during the trial but who did not appear to  
18 testify. You should not speculate as to what those people  
19 would have testified to had they been called. Their absence  
20 should not affect your judgment in any way. You should keep  
21 in mind my instruction, however, that the law does not impose  
22 on a defendant the burden or duty of calling any witnesses or  
23 producing any evidence. It is the government's burden to  
24 prove beyond a reasonable doubt each element of the crimes  
25 charged in the indictment.

1           Speaking of the indictment, Instruction Number 8, I  
2     instruct you that you must presume the defendants to be  
3     innocent of the crimes charged. Thus, the defendants,  
4     although accused of a crime in the indictment, begin the  
5     trial with a clean slate -- with no evidence against them.

6           The indictment, as you already know, is not evidence  
7     of any kind. The defendants are, of course, not on trial for  
8     any act or crime not contained in the indictment. The law  
9     permits nothing but legal evidence presented before the jury  
10    in court to be considered in support of any charge against  
11    the defendant. The presumption of innocence alone,  
12    therefore, is sufficient to acquit the defendant.

13          The burden is always upon the prosecution to prove  
14    guilt beyond a reasonable doubt. This burden never shifts to  
15    a defendant for the law never imposes upon a defendant in a  
16    criminal case the burden of calling any witnesses or  
17    producing any evidence. The defendant is not even required  
18    or obligated to produce any evidence by cross-examining the  
19    witnesses for the government.

20          It is not required that the government prove guilt  
21    beyond all possible doubt. The test is one of reasonable  
22    doubt. Unless the government proves beyond a reasonable  
23    doubt that a defendant has committed each and every element  
24    of an offense charged in the indictment, you must find the  
25    defendants not guilty of the offense.



1           Now, if the jury views the evidence in the case as  
2 reasonably permitting either of two conclusions -- one of  
3 innocence, the other of guilt -- the jury must, of course,  
4 adopt the conclusion of innocence.

5           Instruction Number 9: We had an expert witness in  
6 here. The Rules of Evidence ordinarily do not permit  
7 witnesses to testify as to their own opinions or their own  
8 conclusions about important questions in a trial. An  
9 exception to this rule exists to those persons who are  
10 described as expert witnesses.

11           An expert witness is someone who, by education or by  
12 experience, may have become knowledgeable in some technical  
13 or scientific or very specialized area. If such knowledge or  
14 experience may be of assistance to you in understanding some  
15 of the evidence or in determining a fact, an expert witness  
16 in that area may state an opinion as to a matter in which he  
17 or she claims to be an expert.

18           Now, you should consider each expert opinion  
19 received in evidence in this case and give it such weight, if  
20 any, as you may think it deserves. You should consider the  
21 testimony of expert witnesses just as you consider other  
22 evidence in this case. If you should decide that the opinion  
23 of an expert witness is not based upon sufficient education  
24 or experience, if you should conclude that the reasons given  
25 in support of the opinion are not sound, or if you should

1 conclude that the opinion is outweighed by other evidence,  
2 you may disregard the opinion in part or in its entirety.

3 As I've told you several times, the jury is the sole  
4 judges of the facts of this case.

5 Number 10: The government has presented exhibits in  
6 the form of charts and summaries. You should consider these  
7 charts and summaries as you would any other evidence in the  
8 case.

9 Now, Number 11 is an instruction I gave you in the  
10 beginning of this case, and that has to do with credibility  
11 of the witnesses.

12 You, as the jurors, are the sole judges of the  
13 credibility of the witnesses and the weight their testimony  
14 deserves. You may be guided by their appearance and conduct  
15 of the witness, or by the manner in which the witness has  
16 testified, or by the character of the testimony given, or by  
17 evidence to the contrary of the testimony given.

18 You should carefully scrutinize all the testimony  
19 given, the circumstances under which each witness has  
20 testified, and every matter in evidence that tends to show  
21 whether the witness is worthy of belief. Consider each  
22 witness's intelligence, motive and state of mind, and  
23 demeanor or manner while on the stand. Consider the  
24 witness's ability to observe the matters as to which he or  
25 she has testified and whether he or she impresses you as

1 having an accurate recollection of these matters.

2 Consider also any relation each witness may bear to  
3 either side of the case, the manner in which each witness  
4 might be affected by the verdict, and the extent to which, if  
5 at all, each witness is either supported or contradicted by  
6 other evidence in the case.

7 Inconsistencies or discrepancies in the testimony of  
8 a witness, or between the testimony of different witnesses,  
9 may or may not cause you, as jurors, to discredit such  
10 testimony. Two or more persons witnessing an incident or  
11 transaction may see or hear it differently. An innocent  
12 misrecollection, like a failure of recollection, is not an  
13 uncommon experience.

14 In weighing the effect of a discrepancy, always  
15 consider whether it pertains to a matter of importance or an  
16 unimportant detail and whether the discrepancy results from  
17 innocent error or intentional falsehood.

18 After making your own judgment, you are to give the  
19 testimony of each witness such weight, if any, as you think  
20 it deserves. You may, in short, accept or reject the  
21 testimony of any witness in whole or in part.

22 Also, the weight of the evidence is not necessarily  
23 determined by the number of witnesses testifying to the  
24 existence or the nonexistence of any fact. You may find that  
25 the testimony of a small number of witnesses as to any fact

1 is more credible than the testimony of a large number of  
2 witnesses to the contrary.

3 My next instruction has to do with credibility of  
4 one convicted of a felony.

5 The testimony of a witness may be discredited or  
6 impeached by evidence showing that the witness has been  
7 convicted of a felony, a crime for which a person may receive  
8 a prison sentence of more than a year.

9 Prior conviction of a crime that is a felony is one  
10 of the circumstances which you may consider in determining  
11 the credibility of that witness.

12 It is the sole and exclusive right of the jury to  
13 determine the weight to be given to any prior conviction as  
14 impeachment and the weight to be given to the testimony of  
15 anyone who has previously been convicted of a felony.

16 Instruction Number 13 pertains to use of testimony  
17 by those who have entered into plea agreements.

18 In this case, the government called as witnesses  
19 alleged accomplices, with whom the government had entered  
20 into plea agreements providing for the dismissal of some  
21 charges. Such plea bargaining, as it is called, is common  
22 and has been approved as lawful and proper, and is expressly  
23 provided for in the rules of this court.

24 An alleged accomplice, including one who has entered  
25 into a plea agreement with the government, does not thereby

1 become incompetent as a witness. On the contrary, the  
2 testimony of such a witness may alone be of sufficient weight  
3 to sustain a verdict of guilty. However, the jury should  
4 keep in mind that such testimony is always received with  
5 caution and weighed with great care.

6           You should never convict a defendant upon the  
7 unsupported testimony of an alleged accomplice unless you  
8 believe that testimony beyond a reasonable doubt; and the  
9 fact that an accomplice has entered a plea of guilty to the  
10 offense charged is not evidence, in and of itself, of the  
11 guilt of any other person.

12           We have had a law enforcement witness in this case.  
13 You have heard the testimony of law enforcement officers, or  
14 officer. The fact that a witness may be employed as a law  
15 enforcement officer does not mean that his or her testimony  
16 is necessarily deserving of more or less consideration or  
17 greater or lesser weight than that of an ordinary witness.

18           At the same time, it is quite legitimate for defense  
19 counsel to try to attack the testimony of a law enforcement  
20 witness on the grounds that his or her testimony may be  
21 colored by a personal or professional interest in the outcome  
22 of the case.

23           It is your decision, after reviewing all the  
24 evidence, whether to accept the testimony of the law  
25 enforcement witness and to give that testimony whatever

1 weight, if any, you think it deserves.

2 Instruction Number 15 deals with the credibility of  
3 the witnesses with respect to inconsistent statements.

4 A witness may be discredited or impeached by  
5 contradictory evidence or by evidence that at some other time  
6 the witness has said or done something or has failed to say  
7 or do something which is inconsistent with the witness's  
8 present testimony, that is, the testimony here in court.

9 If you believe that a witness has been impeached and  
10 thus discredited, it is your exclusive province to give the  
11 testimony of that witness such credibility, if any, as you  
12 think it deserves.

13 If a witness is shown knowingly to have testified  
14 falsely concerning any material matter, you have a right to  
15 distrust such testimony in other particulars, and you may  
16 reject all the testimony of that witness or give it such  
17 credibility as you think it deserves.

18 Instruction Number 16, the defendant as a witness:

19 You should judge the testimony of the defendant in  
20 the same manner as you judge the testimony of any other  
21 witness in the case.

22 Several terms are used in the indictment, ladies and  
23 gentlemen. Those terms being "on or about," "knowingly,"  
24 "willfully." So we will define those terms.

25 Instruction Number 17, "On Or About": You will note

1 that the indictment charges that the offense was committed  
2 "on or about" a certain date. The proof need not establish  
3 with certainty the exact date of the alleged offense. It is  
4 sufficient that the evidence in the case establishes beyond a  
5 reasonable doubt that the offense was committed on a date  
6 reasonably near the date alleged.

7 Instruction Number 18, "Knowingly": The word  
8 "knowingly" means that the act was done voluntarily and  
9 intentionally and not because of mistake or accident.

10 Instruction number 19, "Willfully." The term  
11 "willfully," as used in these instructions to describe the  
12 alleged state of mind of the defendant, means that he  
13 knowingly performed an act, deliberately and intentionally on  
14 purpose, as contrasted with accidentally, carelessly, or  
15 unintentionally.

16 Instruction Number 20 deals with the issue of  
17 motive. Intent and motive are different concepts and should  
18 never be confused. Motive is what prompts a person to act or  
19 to fail to act. Intent refers only to the state of mind with  
20 which the act is done or omitted.

21 Personal advancement and financial gain, for  
22 example, are two well-recognized motives for much of human  
23 conduct. These motives, however, may prompt one person to  
24 voluntary acts of good while prompting another person to  
25 voluntary acts of crime. Good motive alone is never a

1 defense where the act done or omitted is a crime. The motive  
2 of the defendants is, therefore, immaterial except insofar as  
3 the evidence of motive may aid the determination of the state  
4 of mind or the intent of an individual.

5           Number 21, how to prove intent: The intent of a  
6 person or the knowledge that a person possesses at any given  
7 time may not ordinarily be proved directly because there is  
8 no way of scrutinizing the workings of the human mind. In  
9 determining the issue of what a person knew or what a person  
10 intended at a particular time, you may consider any  
11 statements made or acts done or omitted by that person and  
12 all other facts and circumstances received in evidence which  
13 may aid in your determination of that person's knowledge or  
14 intent.

15           You may infer, but you are certainly not required to  
16 infer, that a person intends the natural and probable  
17 consequences of acts knowingly done or knowingly omitted. It  
18 is entirely up to you, however, to decide what facts to find  
19 from the evidence received during this trial.

20           Number 22 is something called 404(b) evidence. You  
21 may have heard evidence that the defendant or the defendants  
22 committed certain acts that may be similar to the acts  
23 alleged or charged in the Second Superseding Indictment. You  
24 may not consider this evidence in deciding if the defendant  
25 committed the acts charged in the Second Superseding



1 Indictment.

2           However, you may consider this evidence for other,  
3 very limited purposes, such as the following: to prove that  
4 the defendant had motive or the opportunity to commit the  
5 crime charged in the Second Superseding Indictment; to prove  
6 that the defendant had the state of mind or the intent  
7 necessary to commit the crimes charged in the Second  
8 Superseding Indictment; to prove that the defendant acted  
9 according to a plan or in preparation to commit the crimes  
10 charged in the Second Superseding Indictment; to prove that  
11 the defendant knew what he was doing when he committed the  
12 crimes charged in the Second Superseding Indictment; or to  
13 prove that the defendant did not commit the crimes in the  
14 Second Superseding Indictment by mistake or by accident.

15           Do not conclude from this evidence that the  
16 defendant has bad character in general or that because the  
17 defendant may have committed other similar acts that it's  
18 more likely that he committed the crimes with which he is  
19 currently charged.

20           Now, I made reference to the Second Superseding  
21 Indictment. I don't want to confuse you. This is the Second  
22 Superseding Indictment before the Court. We are simply  
23 referring to the charges before the Court, the indictment  
24 before the Court.

25           Number 23, the relationship between violations of

1 civil regulations and violations of criminal law:

2 Evidence has been received in this case that certain  
3 regulatory statutes may have been violated during the time  
4 alleged in the indictment. Although violations of regulatory  
5 statutes may not be considered by you as violation of  
6 criminal law, evidence of violations of civil statute may be  
7 considered by you as any other evidence in determining  
8 whether the defendant had the required knowledge and intent  
9 to violate the criminal law.

10 Number 24, good-faith defense: Good faith is a  
11 complete defense to a charge that requires intent to defraud.  
12 A defendant is not required to prove good faith. The  
13 government must prove intent to defraud beyond a reasonable  
14 doubt.

15 An honestly held opinion or an honestly formed  
16 belief cannot be fraudulent intent, even if the opinion or  
17 the belief is mistaken. Similarly, evidence of a mistake in  
18 judgment, an error in management, or carelessness cannot  
19 establish fraudulent intent.

20 However, an honest belief that a business venture  
21 would ultimately success does not constitute good faith if  
22 the defendant intended to deceive others by making  
23 representations that the defendant knew to be false or  
24 fraudulent.

25 The next instruction deals with reliance on counsel,

1 good-faith reliance on counsel:

2           Good faith, as I said, is a complete defense to the  
3 charge in the indictment because the government must prove  
4 beyond a reasonable doubt that the defendants acted with  
5 intent to defraud. Evidence that the defendant in good faith  
6 followed the advice of counsel would be inconsistent with  
7 such an unlawful intent.

8           The defendant offered evidence of his reliance upon  
9 the advice of counsel. Unlawful intent has not been proved  
10 if the defendant, before acting: made a full and complete  
11 good-faith report of all material facts to an attorney that  
12 he considered competent; received the attorney's advice as to  
13 the specific course of conduct that was followed; and  
14 reasonably relied upon that advice in good faith.

15           Instruction Number 26 deals with "Deliberate  
16 Ignorance." The government may prove that the defendants,  
17 Daryl Bank and Billy J. Seabolt, acted knowingly by proving  
18 beyond a reasonable doubt that these defendants deliberately  
19 closed their eyes to what would otherwise have been obvious  
20 to them. No one can avoid responsibility for a crime by  
21 deliberately ignoring what is obvious. A finding beyond a  
22 reasonable doubt of an intent of defendants Daryl Bank and  
23 Billy J. Seabolt to avoid knowledge or enlightenment would  
24 permit the jury to find knowledge. Stated another way, a  
25 person's knowledge of a particular fact may be shown from a

1 deliberate or intentional ignorance or a deliberate or  
2 intentional blindness to the existence of that fact.

3 It is, of course, entirely up to you as to whether  
4 you find any deliberate ignorance or deliberate closing of  
5 the eyes and any inferences to be drawn from such evidence.

6 You may not conclude that the defendants Daryl Bank  
7 and Billy J. Seabolt had knowledge, however, from proof of a  
8 mistake, negligence, carelessness, or a belief in an  
9 inaccurate proposition.

10 Now, the next instruction deals with ignorance of  
11 the law, Instruction Number 27.

12 It is not necessary for the prosecution to prove  
13 defendants Daryl Bank and Billy J. Seabolt knew that a  
14 particular act or failure to act is a violation of law.  
15 Unless and until outweighed by the evidence in the case to  
16 the contrary, the presumption is that every person knows what  
17 the law forbids and what the law requires to be done.

18 "False Exculpatory Statements." This is Instruction  
19 Number 28:

20 Statements knowingly and voluntarily made by a  
21 defendant upon being informed that a crime had been committed  
22 or upon being accused of a criminal charge may be considered  
23 by the jury.

24 When a defendant voluntarily offers an explanation  
25 or voluntarily makes some statement tending to show his

1 innocence and it is later shown that the defendant knew that  
2 this statement or explanation was false, the jury may  
3 consider this as showing a consciousness of guilt on the part  
4 of a defendant since it is reasonable to infer that an  
5 innocent person does not usually find it necessary to invent  
6 or fabricate an explanation or statement tending to establish  
7 his innocence.

8           Whether or not evidence as to a defendant's  
9 explanation or statement points to a consciousness of guilt  
10 on his part and the significance, if any, to be attached to  
11 any such evidence are matters exclusively within the province  
12 of the jury since you are the sole judges of the facts of  
13 this case.

14           In your evaluation of the evidence of an exculpatory  
15 statement shown to be false, you may consider that there may  
16 be reasons -- fully consistent with innocence -- that could  
17 cause a person to give a false statement showing that he did  
18 not commit a crime. Fear of law enforcement, reluctance to  
19 become involved, and simple mistake may cause a person who  
20 has committed no crime to give such a false statement or  
21 explanation.

22           Instruction Number 29 deals with "Proof may be  
23 disjunctive."

24           The Court instructs the jury that although the  
25 indictment may charge a defendant with committing an offense

1 in several ways, using conjunctive language -- that is, the  
2 word "and" -- it is sufficient if the government proves the  
3 offense in the disjunctive -- that means by the word, for  
4 example, "or" -- that is to say, the jury may convict on a  
5 unanimous finding of any elements of a conjunctively charged  
6 offense.

7 Therefore, I instruct you that it is not necessary  
8 for the government to prove that the defendant did each of  
9 those things charged in the indictment. It is sufficient if  
10 the government proves beyond a reasonable doubt that the  
11 defendant did any of these alternative acts charged, as long  
12 as you all agree that the same particular alternative act was  
13 committed.

14 What is aiding and abetting? I'm sure you've heard  
15 the term "aiding and abetting" somewhere.

16 A person may violate the law even though he or she  
17 does not personally do each and every act constituting the  
18 offense if that person aided and abetted the commission of  
19 the offense.

20 Section 2(a) of Title 18 of the United States Code  
21 provides: "Whoever commits an offense against the  
22 United States or aids, abets, counsels, commands, induces, or  
23 procures its commission is punishable as a principal."

24 Before a defendant may be held responsible for  
25 aiding and abetting others in the commission of a crime, it

1 is necessary that the government prove beyond a reasonable  
2 doubt that the defendant knowingly and deliberately  
3 associated himself in some way with the crime charged and  
4 participated in it with the intent to commit the crime.

5 In order to be found guilty of aiding and abetting  
6 the commission of the crimes charged in Counts Two through  
7 Six, mail fraud; Count Seven and Counts Nine through Twelve,  
8 wire fraud; Counts Fourteen through Eighteen, sale of  
9 unregistered securities; Counts Nineteen through Twenty-Two,  
10 securities fraud; and Counts Twenty-Four through  
11 Twenty-Eight, unlawful monetary transactions of the  
12 indictment, the government must prove beyond a reasonable  
13 doubt that the defendant:

14 One, knew that the crime charged was to be committed  
15 or was being committed; two, knowingly did some act for the  
16 purpose of aiding, commanding, or encouraging the commission  
17 of that crime; and, three, acted with the intention of  
18 causing the crime charged to be committed.

19 Before the defendant may be found guilty as an aider  
20 or an abettor to the crime, the government must also prove,  
21 beyond a reasonable doubt, that some person or persons  
22 committed each of the essential elements of the offenses  
23 charged in Counts Two through Six, that is, the mail fraud;  
24 Count Seven and Counts Nine through Twelve, wire fraud;  
25 Counts Fourteen through Eighteen, sale of unregistered

1 securities; Counts Nineteen through Twenty-Two, securities  
2 fraud; and Counts Twenty-Four through Twenty-Eight, unlawful  
3 monetary transactions of the indictment.

4 Merely being present at the scene of the crime or  
5 merely knowing that a crime is being committed or is about to  
6 be committed is not sufficient conduct for the jury to find  
7 the defendant aided and abetted the commission of that crime.

8 The government must prove that the defendant  
9 knowingly and deliberately associated himself with the crime  
10 in some way as a participant -- someone who wanted the crime  
11 to be committed -- not as a mere spectator.

12 Ladies and gentlemen, a lot of those instructions  
13 the Court just gave you were kind of preparatory  
14 instructions. What the Court is about to do now is the Court  
15 will turn to instructions pertaining to each of the offenses  
16 charged in the indictment.

17 We're going to start with Count One, which charges  
18 conspiracy to commit mail and wire fraud. These instructions  
19 are usually long, but you will have them, again, in writing.

20 Count One of the Second Superseding Indictment  
21 charges that from in or about January 2012, through in or  
22 about July 2017, here in the Eastern District of Virginia and  
23 elsewhere, the defendants, Daryl G. Bank and Billy J.  
24 Seabolt, and others known and unknown, did knowingly and  
25 intentionally combine, conspire, confederate, and agree



1 together to commit the following offenses against the  
2 United States:

3           Number one, mail fraud: Defendants, and others  
4 known and unknown, having devised a scheme or artifice to  
5 defraud and to obtain money and property by means of  
6 materially false and fraudulent pretenses, representations,  
7 and promises, did knowingly place and caused to be placed in  
8 any post office and authorized depository for mail, any  
9 matter and thing whatsoever to be sent and delivered by the  
10 Postal Service; did deposit and caused to be deposited any  
11 matter and thing whatever to be sent and delivered by any  
12 private and commercial interstate carrier; and caused to be  
13 delivered by mail and such carrier any matter and thing  
14 whatever according to the directions thereon, in violation of  
15 Title 18, United States Code, Section 1341; and

16           Number Two, wire fraud: Defendants, and others  
17 known and unknown, having devised a scheme and artifice to  
18 defraud and to obtain money and property by means of  
19 materially false and fraudulent pretenses, representations,  
20 and promises, did transmit and cause to be transmitted by  
21 means of wire communication in interstate commerce writings,  
22 signs, signals, pictures, and sounds for the purpose of  
23 execution of such scheme and artifice, in violation of  
24 Title 18, United States Code, Section 1343.

25           The purpose of the conspiracy was for Daryl G. Bank

1 and Billy J. Seabolt, and others, to profit personally by  
2 misleading investors in material ways about the use of  
3 investment funds, who controlled the investment funds, the  
4 nature of the investment, and the status of the invested  
5 funds, in violation of Title 18, United States Code,  
6 Sections 1349, 1341, and 1343.

7           These jury instructions will follow a pattern.  
8 First you will be told what the charge is, then we'll move to  
9 talking about giving you and listing the statute that defines  
10 what the crime is, and the third thing we will do is move to  
11 what the government is required to do to prove that  
12 violation.

13           So now we go to Jury Instruction Number 32. The  
14 last one was 31.

15           Number 32 will take you to the statute that  
16 prohibits the charged crime.

17           Title 18, United States Code, Chapter 63,  
18 Section 1349, provides in pertinent part:

19           "Any person who...conspires to commit any offense  
20 under this chapter shall be subject to the same penalties as  
21 those proscribed for the offense, the commission of which was  
22 the object of the...conspiracy."

23           In turn, Title 18, United States Code, Chapter 63,  
24 Section 1341, provides in pertinent part:

25           Whoever, having devised or intending to devise any

1 scheme or artifice to defraud, for the purpose of executing  
2 such scheme or artifice, places in any post office or  
3 authorized depository for mail matter any matter or thing  
4 whatever to be sent or delivered by the Postal Service or  
5 sent or delivered by any private or commercial interstate  
6 carrier, shall be guilty of an offense against the  
7 United States.

8 In turn, Title 18, United States Code, Chapter 63,  
9 Section 1343, provides in pertinent part:

10 Whoever, having devised or intending to devise any  
11 scheme or artifice to defraud, transmits or causes to be  
12 transmitted, by means of wire communications in interstate  
13 commerce, any writings, signs, signals, pictures, or sounds,  
14 for the purpose of executing such scheme or artifice, shall  
15 be guilty of an offense against the United States.

16 That's the statute for mail fraud and wire fraud.

17 Now to the essential elements on Count One:

18 In order to sustain its burden of proof for the  
19 crime of conspiracy as charged in Count One of the Second  
20 Superseding Indictment, the government must prove the  
21 following three essential elements beyond a reasonable doubt:

22 I sometimes tell lay people that when we say  
23 "essential elements," in effect we're talking about the  
24 critical facts.

25 First: That the conspiracy, agreement, or

1 understanding to commit mail or wire fraud, as charged in the  
2 Second Superseding Indictment, was formed, reached, or  
3 entered into by two or more persons;

4 Second: That at some time during the existence or  
5 the life of the conspiracy, agreement, or understanding, the  
6 defendant you are considering knew the purpose of the  
7 agreement; and

8 Third: That with knowledge of the purpose of the  
9 conspiracy, agreement, or understanding, the defendant you  
10 are considering then deliberately joined the conspiracy,  
11 agreement, or understanding.

12 Now, what is a conspiracy, ladies and gentlemen?

13 A conspiracy is a combination or agreement of two or  
14 more persons to join together to attempt to accomplish some  
15 unlawful purpose. It is a kind of partnership in criminal  
16 purposes where each member becomes the agent of every other  
17 member. The gist or essence of the offense is a combination  
18 or mutual agreement by two or more persons to disobey or  
19 disregard the law.

20 The evidence in the case need not show that the  
21 alleged members of the conspiracy entered into any express or  
22 formal agreement; or that they directly stated between  
23 themselves the details of the scheme and its object or the  
24 purpose, or the precise means by which the object or purpose  
25 was to be accomplished.

1           Similarly, the evidence in the case need not  
2 establish that all the means or methods set forth in the  
3 indictment were, in fact, agreed upon to carry out the  
4 alleged conspiracy, or that all of the means or methods which  
5 were agreed upon were actually used or put into operation.  
6 Neither must it be proved that all of the persons charged to  
7 have been members of the conspiracy were such, nor that the  
8 alleged conspirators actually succeeded in accomplishing  
9 their unlawful objectives. Neither is it necessary for the  
10 government to prove any of the overt acts listed in the  
11 Second Superseding Indictment.

12           What the evidence in the case must show beyond a  
13 reasonable doubt, ladies and gentlemen, is:

14           That two or more persons in some way or manner,  
15 positively or tacitly, came to a mutual understanding to try  
16 to accomplish a common unlawful plan, as charged in the  
17 Second Superseding Indictment;

18           That the defendants willfully became members of such  
19 conspiracy.

20           One may become a member of a conspiracy without full  
21 knowledge of all the details of the unlawful scheme or the  
22 names and identities of all of the other alleged  
23 conspirators.

24           So if a defendant, with an understanding of the  
25 unlawful character of a plan, knowingly and willfully joins

1 in an unlawful scheme on one occasion, that is sufficient to  
2 convict him for conspiracy even though he had not  
3 participated at earlier stages in the scheme and even though  
4 he played only a minor part in the conspiracy.

5 Of course, mere presence at the scene of an alleged  
6 transaction or event, or mere similarity of conduct among  
7 various persons and the fact that they may have associated  
8 with each other, and may have assembled together and  
9 discussed common aims and interests, does not necessarily  
10 establish proof of the existence of a conspiracy.

11 Also, a person who has no knowledge of a conspiracy,  
12 but who happens to act in a way which advances some object or  
13 purpose of a conspiracy, does not thereby become a  
14 conspirator.

15 In your consideration of the conspiracy offense, as  
16 alleged in the Second Superseding Indictment, you should  
17 first determine, from all of the testimony and evidence in  
18 the case, whether or not the conspiracy existed as charged.  
19 If you conclude that a conspiracy did exist as alleged, you  
20 should next determine whether or not the defendants willfully  
21 became members of such a conspiracy.

22 If and when it does appear beyond a reasonable doubt  
23 from the evidence in the case that a conspiracy did exist as  
24 charged, and that the defendants were members, then the  
25 statements and acts made and done during such conspiracy and

1 in furtherance of its objects, by another proven member of  
2 the conspiracy, may be considered by the jury as evidence  
3 against the defendant under consideration, even though he was  
4 not present to hear the statements made or see the act done.

5 This is true, ladies and gentlemen, because, as  
6 stated earlier, a conspiracy is a kind of partnership so that  
7 under the law each member is an agent or partner of every  
8 other member and each member is bound by or responsible for  
9 the acts and the statements of every other member made in  
10 pursuance of their unlawful scheme.

11 The next instruction may seem like it's repetitious,  
12 but it defines the existence of an agreement, a conspiracy  
13 agreement. What does all that mean? So we will read this  
14 instruction also to you:

15 A criminal conspiracy is an agreement or a mutual  
16 understanding knowingly made and knowingly entered into by at  
17 least two people to violate the law by some joint or common  
18 plan or course of action. A conspiracy is, in a very true  
19 sense, a partnership in crime.

20 I told you it was repetitive, but the Court is still  
21 required to give it.

22 A conspiracy or agreement to violate the law, like  
23 any other kind of agreement or understanding, need not be  
24 formal, written, or even expressed directly in every detail.

25 The government must prove that the defendants, Daryl

1 Bank and Billy J. Seabolt, knowingly and deliberately arrived  
2 at an agreement or understanding that they, and perhaps  
3 others, would violate some law by means of some common plan  
4 or course of action as alleged in Count One of the Second  
5 Superseding Indictment.

6 It is proof of this conscious understanding and  
7 deliberate agreement by the alleged members that should be  
8 central to your consideration of the charge of conspiracy.

9 Unless the government proves beyond a reasonable  
10 doubt that a conspiracy, just as explained, actually existed,  
11 then you must acquit the defendants.

12 What does it mean to be a member in a conspiracy?  
13 This is Instruction Number 36. The last one was 35.

14 Before the jury may find that the defendants or any  
15 other person became a member of the conspiracy charged in  
16 Count One of the Second Superseding Indictment --

17 Ladies and gentlemen, no matter how many times you  
18 check these instructions, you always miss something.  
19 Everywhere where you see the word "Third" Superseding  
20 Indictment, we're in the Second Superseding Indictment.

21 -- the evidence in the case must show beyond a  
22 reasonable doubt that the defendants knew one or more of the  
23 purposes or goals of the agreement or understanding and  
24 deliberately entered into the agreement intended, in some  
25 way, to accomplish the goal or purpose by this common plan or



1 joint action.

2 Merely associating with others and discussing common  
3 goals, mere similarity of conduct between or among such  
4 persons, merely being present, again, at the place where a  
5 crime takes place or is discussed, or even knowing about  
6 criminal conduct does not, of itself, make someone a member  
7 of the conspiracy or a conspirator.

8 However, once it has been shown that a conspiracy  
9 exists, the evidence need only establish a slight connection  
10 between the defendants and the conspiracy.

11 Instruction Number 37. How do you consider the acts  
12 and declarations of co-conspirators? I think we covered a  
13 little bit of this before, but here's another instruction:

14 Evidence has been received in this case that certain  
15 persons who are alleged in Count One of the indictment to be  
16 co-conspirators of the defendants and other unnamed  
17 co-conspirators have done or said things during the existence  
18 or life of the alleged conspiracy in order to further or  
19 advance its goals.

20 Such acts and statements of these co-conspirators  
21 and other individuals may be considered by you in determining  
22 whether or not the government has proven the charges in  
23 Count One of the indictment against the defendants.

24 Since these acts may have been performed and these  
25 statements may have been made outside the presence of the

1 defendant and even done or said without the defendant's  
2 knowledge, these acts or statements should be examined with  
3 particular care by you before considering them against the  
4 defendant who did not do a particular act or make the  
5 particular statement.

6 I want to make sure that all of you are still with  
7 me, ladies and gentlemen. So a little pause always helps.  
8 The Court can use a little pause too. I haven't done this  
9 since my kids were in the second grade. I mean, well, I  
10 have, but let us continue.

11 Acts done or statements made by an alleged  
12 co-conspirator before a defendant joined a conspiracy may  
13 also be considered by you in determining whether the  
14 government has sustained its burden of proof in Count One of  
15 the indictment.

16 Acts done or statements made before an alleged  
17 conspiracy began or after an alleged conspiracy ended,  
18 however, may only be considered by you regarding the person  
19 who performed that act or made that statement.

20 Next instruction, Instruction Number 38, deals with  
21 agency, agent of the defendant.

22 It is not necessary for the government to prove that  
23 the defendants, Daryl Bank and Billy J. Seabolt, personally  
24 did every act constituting the offense charged.

25 As a general rule, whatever any person is legally

1 capable of doing himself, he can do through another, acting  
2 as his agent. So if the acts or conduct of another is  
3 deliberately ordered or directed by a defendant or  
4 deliberately authorized or consented to by a defendant, then  
5 the law holds that defendant responsible for such acts or  
6 conduct just the same as if personally done by the defendant.

7 Next instruction, Instruction Number 39, deals with  
8 what they call a conspirator's liability for the substantive  
9 counts. Those are non-conspirator counts.

10 A conspirator is responsible for offenses committed  
11 by another conspirator if the conspirator was a member of the  
12 conspiracy when the offense was committed and if the offense  
13 was committed in furtherance of, or as a foreseeable  
14 consequence of, the conspiracy.

15 Therefore, if you have first found the defendant  
16 guilty of the conspiracy charged in Counts One, Thirteen, and  
17 Twenty-Three -- those are the three conspiracy counts -- and  
18 if you find beyond a reasonable doubt that, during the time  
19 the defendant was a member of that conspiracy, another  
20 conspirator committed the offenses in furtherance of or as a  
21 foreseeable consequence of that conspiracy, then you may find  
22 the defendant guilty of other charges, even though the  
23 defendant may not have participated in any or all of the acts  
24 which constitute the offenses described in other charges in  
25 the Superseding Indictment.

1           Now, Instruction Number 40 has to do with the  
2 success of the conspiracy.

3           The government is not required to prove, ladies and  
4 gentlemen, that the parties to or the members of the alleged  
5 agreements or conspiracy were successful in achieving any or  
6 all of the objects of the agreement or conspiracy.

7           Unanimity explained, Instruction Number 41:

8           Each of the conspiracy counts of the Second  
9 Superseding Indictment charge the defendants with violation  
10 of federal law concerning conspiracy. The Second Superseding  
11 Indictment alleges a number of separate means or methods by  
12 which the defendants are accused of violating the law.

13           The government is not required to prove all of the  
14 means or methods alleged in Count Thirteen of the Second  
15 Superseding Indictment.

16           Each juror must agree with each of the other jurors,  
17 however, that the same means or methods alleged in a  
18 conspiracy count within the Second Superseding Indictment  
19 was, in fact, engaged in or employed by defendants in  
20 committing the crime charged in a conspiracy count within the  
21 Second Superseding Indictment.

22           The jury need not unanimously agree on each means or  
23 method, but in order to convict, you must unanimously agree  
24 upon at least one such means or method as one engaged in by  
25 the defendants.

1           Unless the government has proven the same means or  
2 method to each of you, beyond a reasonable doubt, you must  
3 acquit the defendant of the crime charged in each conspiracy  
4 count within the Second Superseding Indictment.

5           Now let's turn to Counts Two through Six:

6           Counts Two through Six of the Second Superseding  
7 Indictment charge that, on or about the dates set forth  
8 below -- and the dates of the alleged offenses are set out in  
9 a chart for Counts Two, Three, and Four -- in the Eastern  
10 District of Virginia and elsewhere, for the purpose of  
11 executing the scheme and artifice to defraud and for  
12 obtaining money and property by means of materially false and  
13 fraudulent pretenses, representations, and promises, and  
14 attempting to do so, the defendants, Daryl G. Bank and Billy  
15 J. Seabolt, knowingly caused to be delivered by U.S. mail and  
16 any private and commercial interstate carrier any matter and  
17 thing whatever according to the directions thereon, and at  
18 the place at which it was directed to be delivered by the  
19 person to whom it was addressed, the following matters, in  
20 violation of Title 18, United States Code, Section 1341  
21 and 2:

22           And on the bottom of this instruction, you have, for  
23 example, Count Two. It tells you the date and the item  
24 mailed. Count Three gives you the date, again, and the item  
25 mailed, and so forth right on through Count Six. So that's

1 the way that instruction is laid out.

2 Now, that is the nature of the offense charged.  
3 What does the statute say which prohibits mail fraud? It  
4 says:

5 Section 1341 of Title 18 of the United States Code  
6 provides that:

7 Whoever, having devised or intending to devise any  
8 scheme or artifice to defraud or for obtaining money or  
9 property by means of false or fraudulent pretenses,  
10 representations, or promises, and for the purpose of  
11 executing such scheme or artifice, or attempting to do so,  
12 places in any post office, or authorized depository for mail  
13 matter, any matter or thing whatever to be sent or delivered  
14 according to the directions thereon shall be guilty of an  
15 offense against the United States.

16 That was 43.

17 What does the government need to prove, looking at  
18 Instruction 44, to prove each of Counts Two through Six?  
19 There are basically four critical elements the government has  
20 to prove.

21 In order to sustain its burden of proof for the  
22 crime of using the mail to conduct fraud as charged in  
23 Counts Two through Six of the Second Superseding Indictment,  
24 the government must prove the following four essential  
25 elements beyond a reasonable doubt:

1           First: Defendant knowingly devised or knowingly  
2 participated in, A, a scheme or artifice to defraud or, B, a  
3 scheme or artifice to obtain money or property by means of  
4 false or fraudulent pretenses, representations, or promises  
5 as alleged in Counts Two through Six of the Second  
6 Superseding Indictment;

7           Second: The scheme or artifice to defraud or the  
8 pretenses, representations, or promises were material, that  
9 is, it would reasonably influence a person to part with money  
10 or property;

11           Three: The defendant did so with intent to  
12 defraud; and

13           Four: In advancement or furthering or carrying out  
14 this scheme or artifice to obtain money or property by means  
15 of false or fraudulent pretenses, representations, or  
16 promises, the defendant used the mails or caused the mails to  
17 be used.

18           Now, let me define these terms that have rolled off  
19 my tongue a couple of times; "any scheme or artifice to  
20 defraud" or "false or fraudulent pretenses, representations,  
21 promises." This is Instruction Number 45. In case you don't  
22 know what that means, look at Instruction Number 45.

23           The phrases "any scheme or artifice to defraud" and  
24 "any scheme or artifice for obtaining money or property" mean  
25 any deliberate plan of action or course of conduct by which

1 someone intends to deceive or to cheat another or by which  
2 someone intends to deprive another of something of value.

3 The term "false or fraudulent pretenses,  
4 representations, or promises" means a statement or an  
5 assertion which concerns a material or important fact or a  
6 material or important aspect of the matter in question and  
7 that was either known to be untrue at the time it was made or  
8 used, or that was made or used with reckless indifference as  
9 to whether it was, in fact, true or false, and made or used  
10 with intent to defraud.

11 The term "false or fraudulent pretenses,  
12 representations, or promises" includes actual, direct false  
13 statements as well as or half-truths, and includes the  
14 knowing concealment of facts that are material or important  
15 to the matter in question and that were made or used with the  
16 intent to defraud.

17 A "scheme or artifice to defraud" includes a scheme  
18 to deprive another person of tangible as well as intangible  
19 property rights. Intangible property rights means anything  
20 valued or considered to be a source of wealth, including, for  
21 example, the right to decide how one's money is to be spent.

22 The intent to defraud. What does that term mean?  
23 To act with an intent to defraud means -- and this is  
24 Instruction 46:

25 To act with an "intent to defraud" means to act



1 knowingly and with the intention or the purpose to deceive or  
2 to cheat.

3 An intent to defraud is accompanied, ordinarily, by  
4 a desire or a purpose to bring about some gain or benefit to  
5 oneself or some other person or by a desire or a purpose to  
6 cause some loss to some person.

7 "Use of the mails" speaks for itself, but the Court  
8 is required to define it.

9 The use of the United States mails or an interstate  
10 carrier is an essential element of the offense of mail fraud  
11 as charged in Counts Two through Six of the Second  
12 Superseding Indictment.

13 The government is not required to prove the  
14 defendant actually mailed anything or that the defendant even  
15 intended that the mails would be used to further or to  
16 advance or to carry out the scheme or plan to obtain property  
17 by false or fraudulent pretenses, representations, or  
18 promises.

19 The government must prove beyond a reasonable doubt,  
20 however, that the mails or an interstate carrier were, in  
21 fact, used in some manner to further or to advance or to  
22 carry out the scheme to obtain money or property by false or  
23 fraudulent pretenses, representations, or promises.

24 The government must also prove that the use of the  
25 mails or the interstate carrier would follow in the ordinary

1 course of business or events or that the use of the mails or  
2 the interstate carrier by someone was reasonably foreseeable.

3 It is not necessary for the government to prove that  
4 the item itself mailed was false or fraudulent or contained  
5 any false or fraudulent statement, representation, or  
6 promise, or contained any request for money or thing of  
7 value.

8 The government must prove beyond a reasonable doubt,  
9 however, that the use of the mails or the interstate carrier  
10 furthered or advanced or carried out, in some way, the scheme  
11 or plan to obtain money or property by means of false or  
12 fraudulent pretenses, representations, or promises.

13 The government and the defendants have stipulated  
14 that the relevant documents were placed into the mail to be  
15 sent and delivered by the U.S. Postal Service, and/or  
16 deposited to be sent or delivered by a private or commercial  
17 interstate carrier.

18 The government has stipulated. They have agreed to  
19 that. That's considered proof.

20 What is material? We talked about materiality.  
21 Something that is material, what does that mean?

22 A statement or representation is material if it has  
23 a natural tendency to influence or is capable of influencing  
24 a decision or action.

25 To be material, it is not necessary that the

1 statement or representation, in fact, influence or deceive.

2 As used in these instructions, a representation,  
3 pretense, or promise is material if it has a natural tendency  
4 to influence, or is capable of influencing, the decisions of  
5 the person or entity to which it is addressed.

6 The government can prove materiality in either of  
7 two ways:

8 First: A representation or promise or pretense is  
9 material if a reasonable person would attach importance to  
10 its existence or nonexistence in determining his or her  
11 choice of action in the transaction in question;

12 Second: A statement could be material, even though  
13 only an unreasonable person would rely on it, if the person  
14 who made the statement knew or had reason to know his or her  
15 victim was likely to rely on it.

16 In determining materiality, you should consider that  
17 naivety, carelessness, negligence, or stupidity of a victim  
18 does not excuse criminal conduct, if any, on the part of the  
19 defendant.

20 Let us turn our attention to the wire fraud counts,  
21 Count Seven and Counts Nine through Twelve.

22 Count Seven and Counts Nine through Twelve of the  
23 Second Superseding Indictment charge that on or about the  
24 dates set forth below --

25 Again, the dates and the charges are in these charts

1 on this instruction.

2 -- in the Eastern District of Virginia and  
3 elsewhere, for the purpose of executing a scheme and artifice  
4 to defraud and for obtaining money and property by means of  
5 materially false and fraudulent pretenses, representations,  
6 and promises, the defendants, Daryl G. Bank and Billy J.  
7 Seabolt, in violation of Title 18, United States Code,  
8 Section 1943 and 2, knowingly transmitted and caused to be  
9 transmitted by means of wire communication in interstate  
10 commerce certain writings, signs, signals, pictures, and  
11 sounds, as follows:

12 Count Seven alleges December 19th, it sent off,  
13 transferred \$50,000. And you go on through Count Nine, it  
14 alleges the date and what was sent. You look at those  
15 counts, and you will deliberate based on looking at those  
16 counts.

17 Now, the statute defining the offense is in  
18 Instruction 50:

19 Section 1343 of Title 18 of the United States Code  
20 provides, in part, that:

21 Whoever, having devised or intending to devise any  
22 scheme or artifice to defraud or for obtaining money or  
23 property by means of false or fraudulent pretenses,  
24 representations, or promises, transmits or causes to be  
25 transmitted by means of a wire communication in interstate

1 commerce writings, signs, signals, pictures, or sounds for  
2 the purpose of executing such scheme or artifice, shall be  
3 guilty of an offense against the United States.

4 Now, what must the government prove beyond a  
5 reasonable doubt on these counts? The government must prove,  
6 again, four elements.

7 In order to sustain its burden of proof for the  
8 crime of using a wire communication to further a scheme or a  
9 plan to obtain money or property by means of false or  
10 fraudulent pretenses, representations, or promises as charged  
11 in Count Seven and Counts Nine through Twelve of the Second  
12 Superseding Indictment, the government must prove the  
13 following four -- the following four essential elements  
14 beyond a reasonable doubt:

15 First: The defendant knowingly devised or  
16 participated in, A, a scheme or artifice to defraud or, B, a  
17 scheme or artifice to obtain money or property by means of  
18 materially false or fraudulent pretenses, representations, or  
19 promises, as detailed in Count Seven and Counts Nine through  
20 Twelve of the Second Superseding Indictment;

21 Second: The scheme or artifice to defraud or the  
22 pretenses, representations, or promises were material, that  
23 is, they would reasonably influence a person to part with  
24 money or property;

25 Three: The defendant did so with intent to

1 defraud; and

2           Four: In advancing or furthering or carrying out  
3 this scheme to defraud or scheme to obtain money or property  
4 by means of false or fraudulent pretenses, representations,  
5 or promises, defendant transmitted any writings, signal, or  
6 sound by means of a wire, radio, or television communication  
7 in interstate commerce or caused the transmission of any  
8 writing, signal, or sound of some kind by means of a wire  
9 communication.

10           I'll clear it up now. The Court used "or television  
11 communication." There was no evidence of television  
12 communication.

13           Now, ladies and gentlemen, what does the term "use  
14 of wire defined" mean? What does it mean to use a wire  
15 communication? We're going to talk about that for just a  
16 second.

17           A wire communication includes a wire transfer of  
18 funds between banks in different states or between a bank in  
19 the United States and a bank in a foreign country. The  
20 government and the defendants have stipulated -- agreed  
21 proved -- that the wires charged in the Second Superseding  
22 Indictment consisted of interstate wire transfer of funds  
23 between banks in different states.

24           The use of the wires need not itself be a fraudulent  
25 representation. It must, however, further or assist in the

1 carrying out of the scheme to defraud.

2 It is not necessary for the defendant to be directly  
3 or personally involved in the wire communication, as long as  
4 the communication was reasonably foreseeable in the execution  
5 of the alleged scheme to defraud in which the defendant is  
6 accused of participating.

7 In this regard, it is sufficient to establish this  
8 element of the crime if the evidence justifies a finding that  
9 the defendant caused the wires to be used by others. This  
10 does not mean that the defendant must specifically have  
11 authorized others to transfer the funds.

12 When one does an act with knowledge that the use of  
13 the wires will follow in the ordinary course of business or  
14 where such use of the wires can reasonably be foreseen, even  
15 though not actually intended, then he causes the wires to be  
16 used.

17 The government contends that it was reasonably  
18 foreseeable that the wires would be used in the ordinary  
19 course of business -- for example, to transfer the funds  
20 between banks -- and, therefore, the defendant caused the use  
21 of the wires.

22 The government does not have to prove that the wires  
23 were used on the exact date charged in the Second Superseding  
24 Indictment. It is sufficient if the evidence establish  
25 beyond a reasonable doubt that the wires were used on a date

1 substantially similar to the dates charged in the Second  
2 Superseding Indictment.

3 We're slowly getting there, ladies and gentlemen. I  
4 think we might make it by 11:30.

5 The nature of the offense charged in Count Thirteen,  
6 conspiracy to sell unregistered securities and to commit  
7 security fraud:

8 Count Thirteen of the Second Superseding Indictment  
9 charges that from in or about January 2012 through in or  
10 about August 2017, in the Eastern District of Virginia, and  
11 elsewhere, the defendants, Daryl G. Bank and Billy J.  
12 Seabolt, and others known and unknown, knowingly and  
13 intentionally combined, conspired, confederated, and agreed  
14 to commit the following offenses against the United States:

15 Of course, this is the conspiracy charge.

16 A, the unlawful sale of unregistered securities:  
17 The defendants, and others known and unknown, willfully  
18 offered and sold, and caused the offer and sale of,  
19 securities to the individuals when no registration statement  
20 was filed with the United States Securities and Exchange  
21 Commission and in effect as to the securities, and used the  
22 means and instruments of transportation and communication in  
23 interstate commerce and the mails in connection with the  
24 offer and sale of the securities, in violation of Title 15,  
25 United States Code, Section 77e and 77x; and



1           B: The defendants, and others known and unknown,  
2 willfully and knowingly, in the offer and sale of securities  
3 by the use of the means and instruments of transportation and  
4 communication in interstate commerce and by the use of mails,  
5 directly and indirectly:

6           A, employed a device, scheme, and artifice to  
7 defraud; B, obtained money by means of untrue statements of  
8 material fact and omissions to state material facts necessary  
9 in order to make the statements made, in light of the  
10 circumstances under which they are made, not misleading; and,  
11 C, engaged in transactions, practices, and courses of  
12 business which operated and would have operated as a fraud  
13 and deceit upon the purchasers, in violation of Title 15,  
14 United States Code, Section 77q(a) and 77x.

15           The purpose of the conspiracy was for the defendants  
16 to enrich themselves through the fraudulent sale of  
17 unregistered securities.

18           In furtherance of the conspiracy and to effect the  
19 purpose thereof, the following overt acts, among others, were  
20 committed in the Eastern District of Virginia and elsewhere:

21           1. The government incorporates by reference the  
22 acts described in the general allegations section of this  
23 Second Superseding Indictment as overt acts in furtherance of  
24 this conspiracy.

25           2. On or about January 8, 2014, Gibson sent an

1 e-mail to a conspirator attaching the signature pages of the  
2 Operating Agreements for victim MG to sign.

3 3. On or about April 11, 2013, Bank made fraudulent  
4 misrepresentations and omissions to victim AR about numerous  
5 securities.

6 4. On or about July 2, 2013, the conspirators  
7 caused victim KG to wire \$25,000 to purchase an interest in  
8 the security WeMonitor Group LLC.

9 5. On or about December 19, 2013, the conspirators  
10 caused victim LZ to wire \$50,000 to purchase an interest in  
11 the security DSPF Group LLC.

12 6. On or about November 14, 2014, Seabolt wrote a  
13 letter to the Virginia SCC claiming that his "client has not  
14 been selling securities at all."

15 7. On or about December 12, 2014, the conspirators  
16 caused victim GC to wire \$160,000 to purchase an interest in  
17 security Venture Capital I.

18 8. On or about June 27, 2015, the conspirators  
19 caused victim GB to wire \$100,000 to purchase an interest in  
20 the security Venture Capital I.

21 And, lastly, 9. On or about June 23, 2015, the  
22 conspirators caused victim NC and GC to wire \$32,000 to  
23 purchase an interest in the security Spectrum 100 LLC.

24 Now let's turn to Instruction 54. This is dealing  
25 with the offense charged in Count Thirteen.

1           Section 371, ladies and gentlemen, of the United  
2 States Code provides, in part, that:

3           If two or more persons conspire either to commit an  
4 offense against the United States or to defraud the  
5 United States, or any agency thereof, and one or more of such  
6 persons do any act to effect the object of the conspiracy,  
7 they shall be guilty of an offense against the United States.

8           What does Count Thirteen charge? What does the  
9 government have to prove on Count Thirteen?

10          To prove a conspiracy as charged in Count Thirteen,  
11 the government must prove four essential elements beyond a  
12 reasonable doubt:

13          First: The conspiracy, agreement, or understanding  
14 to sell unregistered securities or to commit securities  
15 fraud, as charged in the Second Superseding Indictment, was  
16 formed, reached, or entered into by two or more persons;

17          Second: At some time during the existence of the  
18 life of that conspiracy, agreement, or understanding, the  
19 defendant you are considering knew the purpose of the  
20 agreement;

21          Three: With knowledge of the purpose of the  
22 conspiracy, agreement, or understanding, the defendant that  
23 you are considering did deliberately join the conspiracy,  
24 agreement, or understanding; and

25          Fourth: At some time during the existence of the

1 life of the conspiracy, agreement, or understanding, one of  
2 its alleged members knowingly performed one of the overt acts  
3 charged in the Second Superseding Indictment and did so in  
4 order to further or advance the purpose of the agreement.

5 Now, I've referred to an overt act. What is an  
6 overt act? Instruction 56 defines "overt act."

7 In order to sustain its burden of proof under  
8 Count Thirteen of the Second Superseding Indictment, the  
9 government must prove beyond a reasonable doubt that one of  
10 the members of the alleged conspiracy or agreement knowingly  
11 performed at least one overt act and that this overt act was  
12 performed during the existence of the life of the conspiracy  
13 and was done to somehow further the goals of the conspiracy  
14 or agreement.

15 The term "overt act," ladies and gentlemen, means  
16 some type of outward, objective action performed by one of  
17 the parties to, or one of the members of, the agreement or  
18 conspiracy which evidences that agreement.

19 Although you must unanimously agree that the same  
20 overt act was committed, the government is not required to  
21 prove more than one of the overt acts charged.

22 The overt act may, but for the alleged illegal  
23 agreement, appear totally innocent and legal.

24 Now, what is the relationship between the  
25 substantive acts and the conspiracy charged in

1 Count Thirteen?

2 Under the law, participation in a conspiracy to  
3 commit a crime is an entirely separate and distinct charge  
4 from the actual violation of the substantive charge which may  
5 be the object of the conspiracy.

6 I know that sounds confusing, but we will go on and  
7 further explain it.

8 Therefore, all of the underlying elements of the  
9 substantive participation in an act affecting mail and wire  
10 fraud need not be met in order for you to find that there was  
11 a conspiracy to commit the offense. All that you must find  
12 is that there was an agreement to commit that offense and  
13 that a defendant voluntarily joined the conspiracy.

14 I will instruct you on the elements of selling  
15 unregistered securities and committing securities fraud  
16 shortly. You should consider these elements in determining  
17 whether the defendants knowingly and intentionally conspired  
18 to participate in selling unregistered securities and  
19 committing securities fraud.

20 As I've explained to you before, however, the  
21 government need not prove each of these underlying elements  
22 to prove that a defendant conspired to participate in selling  
23 unregistered securities and committing securities fraud.

24 Now, let's turn to Counts Fourteen through Eighteen,  
25 sale of unregistered securities.

1           Counts Fourteen through Eighteen of the Second  
2       Superseding Indictment alleges that from on or about the  
3       dates set forth below, in the Eastern District of Virginia  
4       and elsewhere, defendants, Daryl G. Bank and Billy J.  
5       Seabolt, and others known and unknown, in violation of  
6       Title 15, United States Code, Section 77e and 77x, and  
7       Title 18, United States Code, Section 2, willfully offered  
8       and sold, and caused the offer and sale of, securities to the  
9       individuals identified below when no registration statement  
10      was filed with the United States Securities and Exchange  
11      Commission and in effect as to the securities, and used the  
12      means and instruments of transportation and communication in  
13      interstate commerce and the mails in connection with the  
14      offer and sale of securities.

15           Ladies and gentlemen, once again, if you look at  
16      Counts Fourteen through Eighteen, these counts give the date  
17      of the alleged sale, who the victims were, what the alleged  
18      amounts were right on the bottom of the instruction.

19           That's the alleged offense. Now, what is the  
20      statute that defines the offense that we've just discussed,  
21      that is, the unlawful sale of securities?

22           The Second Superseding Indictment charges that the  
23      defendant used or caused to be used the mails or facility of  
24      interstate commerce to sell a security when no registration  
25      statement was in effect. The relevant statute is

1 Section 77e(a) (1) and (2) of Title 15 of the United States  
2 Code. It provides:

3 Unless a registration statement is in effect as to a  
4 security, it shall be unlawful for any person, directly or  
5 indirectly, to, one, make use of any means or instruments of  
6 transportation or communication in interstate commerce or of  
7 the mails to sell such security through the use or medium of  
8 any prospectus or otherwise; or, two, to carry or cause to be  
9 carried through the mails or in interstate commerce, by any  
10 means or instruments of transportation, any such security for  
11 the purpose of sale or for delivery after sale.

12 Now, again, what does the government have to prove  
13 to prove these charges? Number 60:

14 In order to prove the defendant guilty of sale of  
15 unregistered securities as alleged in Counts Fourteen through  
16 Eighteen of the Second Superseding Indictment, the government  
17 must establish each of the following elements beyond a  
18 reasonable doubt:

19 First: That the securities which the defendant sold  
20 were not registered with the Securities and Exchange  
21 Commission;

22 Second: That the securities sold were required to  
23 be registered with the Securities and Exchange Commission,  
24 that is, that the transactions were not exempt from  
25 registration;

1 Third: That knowing the securities were not  
2 registered and not exempt, the defendant willfully sold or  
3 caused the securities to be sold to the public;

4 Fourth: The defendant knowingly, directly or  
5 indirectly, used or caused to be used the mails or the means  
6 and instrumentalities of interstate commerce to sell the  
7 securities.

8 The Court is going to define a whole bunch of things  
9 pertaining to these securities here. There's five different  
10 elements we have to define.

11 The first element that the government must prove  
12 beyond a reasonable doubt is that the securities which the  
13 defendants sold were not registered with the Securities and  
14 Exchange Commission. And to satisfy the first element of the  
15 offense, the government and the defendants have stipulated  
16 that there were no registration statements filed with the  
17 United States Securities and Exchange Commission for any of  
18 the investments offered by Dominion Private Client Group LLC  
19 or its successor entities, including FAS Partners LLC and  
20 Sovereign Asset Group LLC.

21 The second element deals with the security not being  
22 exempt from registration.

23 The second element that the government must prove  
24 beyond a reasonable doubt is that the securities sold were  
25 required to be registered with the Securities and Exchange



1 Commission; that is, that the transactions were not exempt  
2 from registration.

3 I've already told you that the main purpose of the  
4 Securities Act of 1933 is to protect investors by requiring  
5 publication of information concerning securities offered for  
6 sale so that investors can make informed investment  
7 decisions.

8 However, Congress recognized that under certain  
9 circumstances, securities -- let me back up.

10 However, Congress recognized that under certain  
11 circumstances, investors do not need the protection of the  
12 Act. Therefore, in those instances where Congress believed  
13 that there is no practical need for a registration statement,  
14 securities issued by a company may be exempted from the  
15 registration provision of the Act.

16 Exemptions from the registration requirements are  
17 limited to situations where all persons being offered  
18 securities have access to those basic and material facts  
19 about a company that a registration statement filed with the  
20 Securities and Exchange Commission would disclose.

21 Congress felt that such purchasers are in a position  
22 to fend for themselves on an arm's length basis in acquiring  
23 the company's securities. Securities offered and sold under  
24 those circumstances are not subject to registration  
25 requirements of the Act.

1           Statutory purpose:

2           The stock market crash of 1929 -- little history  
3 here. The stock market crash of 1929 led to much legislation  
4 in the area of federal regulation. Included in this  
5 legislation was the Securities Act of 1933 and the creation  
6 of the Securities and Exchange Commission.

7           The Securities Act was enacted to protect the  
8 investing public in the purchase of stock that is publicly  
9 distributed. The Act requires full and fair disclosure of  
10 all important facts so that the investing public can make  
11 informed investment decisions.

12           When it enacted the Securities Act, Congress  
13 recognized that the purchase of a stock is different from the  
14 purchase of a vegetable bought in the grocery store in that  
15 the average investor is not in a position to make a personal  
16 investigation to determine the worth, quality, and value of  
17 the security.

18           The Securities Act requires a company wishing to  
19 sell its stock to disclose information about the issuing  
20 company which would be material to the investment decisions  
21 of a person interested in buying stock.

22           Under the Securities Act, disclosure takes the form  
23 of a registration statement filed with the Securities and  
24 Exchange Commission and a prospectus summarizing the  
25 information in the registration statement, which is available

1 to the prospective investors. The Act does not authorize the  
2 SEC to pass upon the merits of the securities proposed to be  
3 offered.

4 Among other matters, a registration statement must  
5 disclose information about the nature of the company and its  
6 stock, including information about the financial condition of  
7 the company, the persons who control the company and its  
8 stock, a reasonable factual basis for the anticipated  
9 prospectus for the future, and a statement of the company's  
10 assets and liabilities.

11 In sum, the registration statement contains  
12 information that is designed to protect investors by  
13 furnishing them with detailed information or knowledge of the  
14 company and its affairs to make it possible to form an  
15 informed investment decision.

16 Unless and until these requirements are fulfilled,  
17 the security may not be offered to the public, and the mails  
18 and channels of interstate commerce are closed to the  
19 distribution or redistribution of an issue.

20 What is a security? You've heard a lot of talk  
21 about a security and what is and what is not a security.

22 The term "security," ladies and gentlemen, is  
23 defined -- the term "security" is defined by the statute that  
24 makes securities fraud a crime. Congress defined the term  
25 "security" broadly because its purpose was to regulate

1 investments, in whatever form they are made and by whatever  
2 name they are called.

3           The definition of the term "security" includes:  
4 "Any note, stock, investment contract, participation in any  
5 profit-sharing agreement, group or index of securities,  
6 including any interest therein or based on the value thereof,  
7 and in general, any interest or instrument commonly known as  
8 a security."

9           In essence, a security is an investment in an  
10 enterprise with the expectation of profit from the efforts of  
11 other people.

12           What is an investment contract?

13           For purposes of the Securities Act, an investment  
14 contract means a contract, transaction, or scheme whereby a  
15 person invests his money in a common enterprise and is led to  
16 expect profits solely from the efforts of the promoter or a  
17 third party, it being immaterial whether the shares in the  
18 enterprise are evidenced by formal certificates or by nominal  
19 interests in the physical assets employed in the enterprise.

20           It embodies a flexible, rather than a static,  
21 principle, one that is capable of adaptation to meet the  
22 countless and variable schemes devised by those who seek to  
23 use the money of others on the promise of profits.

24           As such, an investment contract is a security when  
25 it involves: first, an investment of money; in a common

1 enterprise; with the expectation of profit; and to be derived  
2 solely through the efforts of the promoter or a third party.

3 In searching for the meaning and the scope of the  
4 word "security," form should be disregarded for substance and  
5 the emphasis should be on the economic reality.

6 We talked about a note in this trial. What is a  
7 note? "Note" defined:

8 For purposes of the Securities Act, there is a  
9 presumption that every note is a security unless, under the  
10 family resemblance test, it appears to be more connected with  
11 a consumer context, such as a short-term financing or a  
12 mortgage on a home, rather than an investment.

13 In determining whether a note in this case is  
14 properly categorized as an investment, such that it satisfies  
15 the definition of a security, you should consider the  
16 following:

17 One, motivations: If the seller's purpose is to  
18 raise money for the general use of a business enterprise or  
19 to finance substantial investments and the buyer is  
20 interested primarily in the profit the note is expected to  
21 generate, the note is likely to be a security.

22 Two, plan of distribution: If the plan of  
23 distribution of the notes gave rise to reasonable expectation  
24 that the note was an instrument in which there is common  
25 trading for speculation or investment, then it's likely to be

1 a security. If the notes are sold to a wide range of  
2 unsophisticated people, the notes are more likely to be  
3 securities.

4 Three, the public's reasonable perception: If the  
5 notes were sold as what the public would reasonably perceive  
6 to be investments, then the note is more likely a security.

7 Four, regulated by another scheme: If the note is  
8 not subject to regulation under another regulatory scheme and  
9 the application of the Securities Act is necessary to  
10 regulate the note, then it is likely to be a security.

11 You must weigh these factors, none of which is  
12 dispositive, and deliberate to determine whether the notes at  
13 issue are properly characterized as investments, which  
14 constitute securities, or properly characterized as a  
15 consumer or commercial loan, which are not securities.

16 Counts Nineteen through Twenty-Two deal with  
17 securities fraud.

18 I don't think I'm going to make my 11:30 target, but  
19 if there's an emergency, the Court will take a brief break  
20 for you to tend to the emergency; otherwise, we'll move on.  
21 The Court keeps trying to estimate how long it's going to  
22 take to finish these instructions.

23 So if there's an emergency, raise your hand, and the  
24 Court will stop and deal with it.

25 THE CLERK: Judge, we have one.

1 THE COURT: Okay. Ladies and gentlemen, we're going  
2 to take a 20-minute break, and then we'll be back to finish.

3 (The jury exited the courtroom.)

4 (Recess from 11:28 a.m. to 11:54 a.m.)

5 (The jury entered the courtroom.)

6 THE COURT: The record will reflect that all jurors  
7 are present. Does counsel concur?

8 MS. O'BOYLE: Yes, Your Honor.

9 MR. BROCCOLETTI: Yes, sir.

10 MS. MUNN: Yes, sir.

11 THE COURT: We were about to start on  
12 Counts Nineteen through Twenty-Two when we left, which means  
13 it takes us to Instruction Number 67, in which we lay out and  
14 state the nature of the charges in those counts which deal  
15 with securities fraud.

16 So I will start off reading the nature of the  
17 offense, and then, as usual, I'll go over to the statute that  
18 defines the offense, and then I'll go next to the elements,  
19 what they have to prove to prove those charges.

20 Counts Nineteen through Twenty-Two of the Second  
21 Superseding Indictment charge that from on or about the dates  
22 set forth below -- and there's a chart down here for these  
23 four charges.

24 From on or about the dates set forth below, in the  
25 Eastern District of Virginia and elsewhere, defendants, Daryl

1 G. Bank and Billy J. Seabolt, and others known and unknown,  
2 willfully and knowingly, in the offer and sale of securities  
3 by the use of the means and instruments of transportation and  
4 communication in interstate commerce and by the use of the  
5 mails, directly and indirectly, A, employed a device, scheme,  
6 and artifice to defraud; B, obtained money by means of untrue  
7 statements of material fact and omissions to state material  
8 facts necessary in order to make the statements made, in  
9 light of the circumstances under which they were made, not  
10 misleading; and, C, engaged in transactions, practices, and  
11 courses of business which operated or would have operated as  
12 a fraud and deceit upon investors, in violation of 15 U.S.C.  
13 Section 77q(a), 77x, and 18 U.S.C. Section 2.

14 And the charges are laid out on the bottom of the  
15 instruction as to Count Nineteen and Counts Twenty,  
16 Twenty-One, and Twenty-Two.

17 So what is the statute pertaining to this offense?

18 The Second Superseding Indictment charges the  
19 defendants with fraud and deceit in the sale of stock.

20 The relevant statute on this subject is Title 15,  
21 United States Code, Section 77q(a)(1), (2), and (3). It  
22 provides:

23 It shall be unlawful for any person in the offer or  
24 sale of any securities by the use of any means or instruments  
25 of transportation or communication in interstate commerce or



1 by use of the mails, directly or indirectly:

2 One, to employ any device, scheme, or artifice to  
3 defraud; or

4 Two, to obtain money or property by means of any  
5 untrue statement of a material fact or any omission to state  
6 a material fact necessary in order to make the statements  
7 made, in light of the circumstances under which they were  
8 made, not misleading; or

9 Three, to engage in any transaction, practice, or  
10 course of business that operates or would operate as a fraud  
11 or deceit upon the purchaser.

12 What are the elements of the offense that the  
13 government must prove? This is Instruction 69:

14 Counts Nineteen through Twenty-Two of the Second  
15 Superseding Indictment charge the defendant with committing  
16 securities fraud. In order to prove the defendant guilty of  
17 this charge, the government must prove beyond a reasonable  
18 doubt each of three elements:

19 First: The defendant offered or sold the securities  
20 described in the Second Superseding Indictment;

21 Second: In the offer or sale of securities, the  
22 defendant made use of any means or instruments of  
23 transportation or communication in interstate commerce or the  
24 mails; and

25 Three: In the offer or sell of these securities,

1 knowingly, willfully, and with the intent to defraud, either  
2 employed any device, scheme, or artifice to defraud; or  
3 obtained money or property by means of any untrue statement  
4 of material fact or any omission to state a material fact  
5 necessary in order to make the statements made, in light of  
6 the circumstances under which they were made, not  
7 misleading; or engaged in a transaction, practice, or course  
8 of business which operated or would operate as a fraud or  
9 deceit upon the purchaser.

10           The government, ladies and gentlemen, is not  
11 required to prove all of these alternative acts to be  
12 established -- to establish element three above as to the  
13 security alleged in each count.

14           However, each juror must agree with each of the  
15 other jurors that the same act was, in fact, engaged in or  
16 employed by the defendants in the sale or offering of a  
17 security alleged in the relevant count of the Second  
18 Superseding Indictment.

19           For example, the government need not prove that in  
20 selling or offering to sell a security alleged in  
21 Count Nineteen, a defendant both employed any device or  
22 scheme or artifice to defraud and engaged in a transaction,  
23 practice, or course of business which operated or would  
24 operate as a fraud or deceit upon the purchaser.

25           Instead, to convict a defendant on that count, the

1 jury need only unanimously agree on at least alternative act  
2 as one engaged in by the defendants as to the security  
3 alleged in that count. You may find that the defendants  
4 engaged in different alternative acts as between the  
5 securities alleged in Counts Nineteen through Twenty-Two.

6 Unless the government has proven to each of you the  
7 same alternative act satisfying element three as to a  
8 specific count, beyond a reasonable doubt, you must acquit  
9 the defendant of that count.

10 Now, as to the first element, dealing with a  
11 fraudulent act, the first element the government must prove  
12 beyond a reasonable doubt is that in the offering or sale of  
13 a security, the defendant did any one or more of the  
14 following:

15 One: Employed a device, scheme, or artifice to  
16 defraud, or

17 Two: Obtained money or property by means of untrue  
18 statements of material facts or failure to state material  
19 facts that made what was said, under the circumstances,  
20 misleading, or

21 Three: Engaged in an act, practice, or course of  
22 business that operated, or would operate, as a fraud or  
23 deceit upon the purchaser.

24 It's not necessary for the government to establish  
25 all three types of unlawful conduct in connection with the

1 offer of sale of securities. Any one will be sufficient for  
2 a conviction if you so find.

3 It is no defense to an overall scheme to defraud  
4 that the defendant was not involved in the scheme from its  
5 inception or played only a minor role with no contact with  
6 investors and purchasers of the securities in question. Nor  
7 is it necessary for you to find that the defendant was the  
8 actual seller or offeror of the security.

9 It is sufficient if the defendant participated in  
10 the scheme or fraudulent conduct that involved the offer or  
11 sale of a security. By the same token, the government need  
12 not prove that the defendant personally made the  
13 misrepresentation or that he omitted the material fact.

14 It is sufficient if the government establishes that  
15 the defendant caused a statement to be made or the fact to be  
16 omitted. With regard to the alleged misrepresentations and  
17 omissions, you must determine whether the statement was true  
18 or false when it was made and, in the case of alleged  
19 omissions, whether the omission was misleading.

20 If you find that the government has established  
21 beyond a reasonable doubt that a statement was false or a  
22 statement was omitted, you must next determine whether the  
23 fact misstated or omitted was material under the  
24 circumstances. A material fact is one that would have been  
25 significant to a reasonable investor's investment decision.

1           This is not to say that it is a defense to the crime  
2   if the material misrepresentation would not have deceived a  
3   person of ordinary intelligence. Once you find that there  
4   was a material misrepresentation or omission of a material  
5   fact, it does not matter whether the intended victims were  
6   gullible buyers or sophisticated investors, because the  
7   securities laws protect the gullible and unsophisticated as  
8   well as the experienced investor.

9           To establish that the defendant omitted to state a  
10  material fact, the government is required to show that the  
11  defendant had a duty to disclose the information. Such duty  
12  can arise from a special relationship of trust and confidence  
13  during which the defendant received confidential or nonpublic  
14  information.

15          If you find that the defendant violated a  
16  relationship of trust by using confidential information for  
17  his own benefit without disclosing it, that would be  
18  sufficient to satisfy this requirement.

19          To repeat, in order to find that the element was  
20  violated because the defendant omitted a material fact, you  
21  must find that there existed some special relationship, as  
22  I've just explained, that created such a duty to disclose  
23  that fact. It is a breach of that duty that provides the  
24  basis for the government's charge that the defendant violated  
25  the Act by omitting to state a material fact necessary to

1 make what he said not misleading.

2           It does not matter whether the alleged unlawful  
3 scheme was successful or not, or that the defendant profited  
4 or received any benefit as a result of the alleged scheme.  
5 Success is not an element of the crime charged. However, if  
6 you find the defendant did profit from the alleged scheme,  
7 you may consider that in connection with the third element of  
8 intent.

9           Nonetheless, ladies and gentlemen, you must find  
10 that the conduct in question that is alleged to have been a  
11 fraud did have some impact upon the investor.

12           Now, what does the phrase "the use of any means or  
13 instruments of interstate commerce or the mails" mean?

14           "The use of any means or instruments of  
15 transportation or communication in interstate commerce or by  
16 the use of the mails, directly or indirectly," is an  
17 essential element of the crime of securities fraud as charged  
18 in Counts Nineteen through Twenty-Two of the Second  
19 Superseding Indictment.

20           The term "interstate commerce," as used in these  
21 instructions, means trade or commerce in securities or  
22 transportation or communication relating to such trade or  
23 commerce among the several states.

24           This element of the crime charged may be established  
25 by the government -- may be established if the government

1 proves beyond a reasonable doubt that any means or  
2 instruments of interstate transportation or communication, or  
3 the mails, were, in fact, used in the scheme or that such use  
4 was reasonably foreseeable.

5 In this regard, however, it is not necessary for the  
6 government to prove that the defendant personally carried out  
7 the use of interstate commerce or the use of the mails. It  
8 is not necessary to prove that such use was contemplated or  
9 intended by anyone involved in the scheme. It is sufficient  
10 for the government to prove that beyond a reasonable doubt  
11 the defendant set forces in motion by foreseeably resulted in  
12 such use.

13 The matter, material, or information mailed,  
14 transported, or communicated need not itself contain a  
15 fraudulent representation or request money, but must be part  
16 of the overall scheme.

17 The government and defendants have stipulated,  
18 ladies and gentlemen -- that means they have agreed -- the  
19 relevant documents were placed into the mails to be sent and  
20 delivered by the U.S. Postal Service, and/or deposited to be  
21 sent or delivered by a private or commercial interstate  
22 carrier of the mails.

23 We turn now to Count Twenty-Three.  
24 Count Twenty-Three is a conspiracy charge, again. You  
25 received some previous instructions that help you understand

1 what a conspiracy was and how one becomes a member of the  
2 conspiracy. All of those foregone instructions still apply  
3 here in this case on Count Twenty-Three.

4 Count Twenty-Three of the Second Superseding  
5 Indictment charges that from in or about January 2012 through  
6 in or about August 2017, in the Eastern District of Virginia  
7 and elsewhere, the defendant Daryl G. Bank, and others known  
8 and unknown, knowingly and intentionally combined, conspired,  
9 confederated, and agreed to commit the following offenses  
10 against the United States:

11 A, laundering of monetary instruments, that is, to  
12 knowingly conduct and attempt to conduct financial  
13 transactions affecting interstate and foreign commerce, which  
14 transactions involved the proceeds of specified unlawful  
15 activity -- that is, mail and wire fraud -- knowing that the  
16 transactions were designed in whole and in part to conceal  
17 and disguise the nature, location, source, ownership, and  
18 control of the proceeds of specified unlawful activity, and  
19 that while conducting and attempting to conduct such  
20 financial transactions, knew that the property involved in  
21 the financial transactions represented the proceeds of some  
22 form of unlawful activity, in violation of Title 18, United  
23 States Code, Section 1956(a)(1)(B)(1); and

24 B, laundering of monetary instruments, that is, to  
25 knowingly engage and attempt to engage, in monetary



1 transactions by, through, and to a financial institution,  
2 affecting interstate and foreign commerce, in criminally  
3 derived property of a value greater than \$10,000, that is  
4 deposit, withdrawal, and transfer of monetary instruments,  
5 such property having been derived from a specified unlawful  
6 activity -- that is, mail and wire fraud -- in violation of  
7 Title 18, United States Code, Section 1957.

8 Count Twenty-Three of the Second Superseding  
9 Indictment also alleges that the defendant Bank and his  
10 co-conspirator:

11 A, concealed the original and true source of  
12 fraudulently obtained funds by transferring and laundering  
13 those moneys through multiple financial accounts;

14 B, laundered funds to conceal those moneys from law  
15 enforcement;

16 C, transferred and laundered funds through multiple  
17 financial accounts in order to avoid paying federal taxes on  
18 such funds;

19 D, transferred and laundered funds through financial  
20 accounts to avoid disclosing the failure of investment  
21 offerings to victims;

22 E, transferred and laundered funds exceeding \$10,000  
23 to support Bank's lavish lifestyle.

24 In addition, the ways, manner, and means that  
25 Defendants Bank and Gibson used to accomplish the objectives

1 of the conspiracy included, but were not limited to, the  
2 following acts, transactions all originally derived from  
3 investor funds.

4 Now, ladies and gentlemen, on Count Twenty-Three,  
5 when we start talking about the ways and means, if you look  
6 at the bottom of this instruction that I was just reading,  
7 Instruction Number -- I think it's 72. Let me make sure.  
8 Yes, Instruction Number 72.

9 If you look at the bottom of that count, it lays out  
10 about three pages of different monetary/financial  
11 transactions. The Court is not reading all of those. As a  
12 matter of fact, it's four pages, five pages -- no, six pages.  
13 Wrong again.

14 It's almost ten pages of different transactions that  
15 the defendant is allegedly involved or engaged in reflecting  
16 ways, manners, and means that they used to accomplish the  
17 objectives of this conspiracy. You can read down this sheet  
18 and see what those dates and times and what those activities  
19 were in this case.

20 Now, that's the nature of the offense for  
21 Count Twenty-Three, which is a conspiracy count. Once again,  
22 I want you to remember all the instructions I've given you  
23 about participation in a conspiracy, but I will read to you  
24 the statute defining the offense.

25 Title 18, United States Code, Section 1956(h) states

1 in pertinent part:

2 Any person who conspires to commit concealment money  
3 laundering or unlawful monetary transactions shall be subject  
4 to the same penalties as those prescribed for the offense,  
5 the commission of which was the object of the conspiracy,  
6 shall be guilty of an offense against the United States.

7 In turn, Title 18, United States Code, Section  
8 1956(a)(1)(B)(1) provides in pertinent part -- I think I read  
9 this to you before:

10 Whoever, knowing that the property involved in a  
11 financial transaction represents the proceeds of some form of  
12 unlawful activity, conducts or attempts to conduct such a  
13 financial transaction which, in fact, involves the proceeds  
14 of specified unlawful activity, knowing that the transaction  
15 is designed in whole or in part to conceal or disguise the  
16 nature, the location, the source, the ownership, or the  
17 control of the proceeds of the specified unlawful activity,  
18 shall be guilty, again, of an offense against the  
19 United States.

20 In turn, Title 18, United States Code, Section 1957  
21 provides in pertinent part:

22 Whoever knowingly engages or attempts to engage in a  
23 monetary transaction and criminally derived property of a  
24 value greater than \$10,000 and is derived from specified  
25 unlawful activity shall be guilty of an offense against the

1 United States.

2 That's the statute defining the offense to  
3 Count Twenty-Three.

4 Now, let's go over and talk about the elements, in  
5 other words, what the government has to prove.

6 Title 18, United States Code, Section 1956(h), makes  
7 it a crime for anyone to conspire to commit money laundering.  
8 For you to find the defendant guilty of this crime, you must  
9 be convinced that the government has proved each of the  
10 following elements beyond a reasonable doubt:

11 First: That the defendant and at least one other  
12 person made an agreement to commit the crime of concealment  
13 money laundering or unlawful monetary transactions;

14 Second: That the defendant knew the unlawful  
15 purpose of the agreement;

16 Third: That the defendant joined in the agreement  
17 willfully, that is, with intent to further the unlawful  
18 purpose.

19 Now, one may become a member of a conspiracy without  
20 knowing all the details, ladies and gentlemen, of the  
21 unlawful scheme or the identities of all the other alleged  
22 co-conspirators. If a defendant understands the unlawful  
23 nature of a plan or scheme and knowingly and intentionally  
24 joins in that plan or scheme on one occasion, that is  
25 sufficient to convict him for a conspiracy even though the

1 defendant had not participated before and even though the  
2 defendant played only a minor role.

3 The government need not prove an overt act in  
4 furtherance of the conspiracy.

5 Now, the next element, still with respect to  
6 Count Twenty-Three, deals with elements of concealment.

7 In order to prove the crime of money laundering in  
8 violation of Section 1956(a)(1)(B), the government must  
9 establish beyond a reasonable doubt each of the following  
10 elements:

11 First: That the defendant conducted, or attempted  
12 to conduct, a financial transaction involving property  
13 constituting the proceeds of a specified unlawful activity;

14 Second: That the defendant knew that the property  
15 involved in the financial transaction was the proceeds of  
16 some form of unlawful activity; and

17 Third: That the defendant knew that the transaction  
18 was designed in whole or in part either to conceal or  
19 disguise the nature, location, source, ownership, or control  
20 of the proceeds of specified unlawful activity, or to avoid a  
21 transaction reporting requirement under state or federal law.

22 Now we get down to the last set of counts, Counts  
23 Twenty-Four through Twenty-Eight, dealing with unlawful  
24 monetary transactions.

25 Counts Twenty-Four through Twenty-Eight of the

1 Second Superseding Indictment charge that from on or about  
2 the following dates and in the manner described below --

3 There's a chart at the bottom of this instruction  
4 laying out what the counts are.

5 -- in the Eastern District of Virginia and  
6 elsewhere, Defendants Daryl G. Bank and Billy J. Seabolt  
7 knowingly engaged and attempted to engage in the following  
8 monetary transactions by, through, and to a financial  
9 institution, affecting interstate and foreign commerce, in  
10 criminally derived property of a value greater than \$10,000,  
11 that is, money deposits which represented fraudulently  
12 obtained funds from investors, such property having been  
13 derived from a specified unlawful activity -- that is, wire  
14 fraud -- in violation of Title 18, United States Code,  
15 Section 1343.

16 If we go to Count Twenty-Four, it gives you the  
17 defendant involved, the date of the conduct, and the  
18 financial transaction. If you go to Count Twenty-Five, you  
19 have the same thing laid out right through  
20 Count Twenty-Eight. That tells you what is charged.

21 What does the statute say about this conduct?

22 Section 1957 of Title 18 states the following:

23 Whoever knowingly engages or attempts to engage in a  
24 monetary transaction in criminally derived property of a  
25 value greater than \$10,000 and is derived from specified

1 unlawful activity shall be guilty of an offense against the  
2 United States.

3 What are the elements the government needs to prove  
4 on each count, Count Twenty-Four through Twenty-Eight?

5 In order to prove the crime of engaging in monetary  
6 transactions and property derived from specified unlawful  
7 activity, in violation of Section 1957, the government must  
8 establish beyond a reasonable doubt each of the following:

9 First: That the defendant engaged in, or attempted  
10 to engage in, a monetary transaction in or affecting  
11 interstate commerce;

12 Second: That the monetary transaction involved  
13 criminally derived property of a value greater than \$10,000;

14 Third: That the property was derived from specified  
15 unlawful activity;

16 Fourth: That the defendant acted knowingly, that  
17 is, with knowledge that the transaction involved proceeds of  
18 a criminal offense;

19 Fifth: That the transaction took place in the  
20 United States.

21 Now we take to explaining a couple of things  
22 pertaining to these transactions. We've got a few elements  
23 we need to explain. As a matter of fact, I'm going to have  
24 to read you instructions to explain each one of these  
25 elements I referred to.

1           The first element: The first element that the  
2 government must prove beyond a reasonable doubt is that the  
3 defendant engaged in a monetary transaction in or affecting  
4 interstate commerce.

5           The term "monetary transaction" means the deposit,  
6 withdrawal, transfer, or exchange, in or affecting interstate  
7 or foreign commerce, of funds or a monetary instrument by,  
8 through, or to a financial institution.

9           The term "interstate or foreign commerce" means  
10 commerce between any combination of states, territories, or  
11 possessions of the United States, or between the  
12 United States and a foreign country.

13           You must find that the transaction affected  
14 interstate commerce in some way, however minimal. This  
15 effect on interstate commerce can be established in several  
16 ways.

17           First, any monetary transaction with a financial  
18 institution insured by the Federal Deposit Insurance  
19 Corporation or the National Credit Union Share Insurance Fund  
20 affects interstate commerce. So if you find that any of the  
21 banks at issue in this case was insured by the FDIC or the  
22 NCUSI -- that is, the National Credit Union Share Insurance  
23 Fund -- that is enough to establish that the transaction  
24 affected interstate commerce.

25           Second, if you find that the source of the funds



1 used in the transaction affected interstate commerce, that is  
2 sufficient as well.

3 Third, if you find that the transaction itself  
4 involved an interstate transfer of funds, that would also be  
5 sufficient.

6 The government and the defendants have stipulated  
7 that the relevant financial institutions were insured by the  
8 FDIC and the NCUSI and the transactions affected interstate  
9 commerce. That's already proven.

10 The second element:

11 What does it mean to say "transactions involved  
12 criminally derived property"?

13 The second element that the government must prove  
14 beyond a reasonable doubt is that the monetary transaction  
15 involved criminally derived property having a value in excess  
16 of \$10,000.

17 The term "criminally derived property" means any  
18 property constituting, or derived from, proceeds obtained  
19 from a criminal offense. The term "proceeds" means any  
20 property derived from or obtained or retained, directly or  
21 indirectly, through some form of unlawful activity, including  
22 the gross receipts of such activity.

23 The government is not required to prove that all of  
24 the property involved in the transaction was criminally  
25 derived property. However, the government must prove that

1 more than \$10,000 of the property involved was criminally  
2 derived property.

3 The third element:

4 First, the term "property derived from specified  
5 unlawful activity," that may be very clear to you, but we're  
6 going to read it anyway.

7 The third element that the government must prove  
8 beyond a reasonable doubt is that the defendant knew that the  
9 property involved in the financial transaction was the  
10 proceeds of some form of unlawful activity.

11 I instruct you that this element refers to a  
12 requirement that the defendant knew the property involved in  
13 the transaction represented proceeds from some form, though  
14 not necessarily which form, of activity that constitutes a  
15 criminal offense under state or federal law. I instruct you  
16 as a matter of law that wire fraud is a criminal offense.

17 The fourth element refers to knowledge.

18 The fourth element that the government must prove  
19 beyond a reasonable doubt is that the defendant knowingly  
20 engaged in an unlawful monetary transaction, as defined  
21 above.

22 I instruct you, ladies and gentlemen, that in a  
23 prosecution for an offense under this section, the government  
24 is not required to prove that the defendant knew the  
25 particular offense from which the criminally derived property

1 was derived. However, the government must prove beyond a  
2 reasonable doubt that the defendant knew that the transaction  
3 involved criminally derived property, which, I remind you,  
4 means any property constituting, or derived from, proceeds  
5 obtained from a criminal offense.

6 If you find that the government has established  
7 beyond a reasonable doubt the defendant knew that the  
8 transaction involved property derived from a criminal  
9 offense, then this element is satisfied.

10 And the last element, the transaction took place in  
11 the United States. What does that mean?

12 The fifth element that the government must prove  
13 beyond a reasonable doubt is that the transaction took place  
14 in the United States.

15 Ladies and gentlemen, we are down to the last three  
16 instructions.

17 I caution you, members of the jury, that you are  
18 here to determine the guilt or innocence of the accused, or  
19 the defendants, from the evidence in this case. The  
20 defendants are not on trial for any act of conduct or offense  
21 not alleged in the indictment. Neither are you called upon  
22 to return a verdict as to the guilt or innocence of any other  
23 person or persons not on trial as a defendant in this case.

24 Also, the punishment provided by law for the  
25 offenses charged in the indictment is a matter exclusively

1 within the province of the Court or the Judge and should  
2 never -- never -- be considered by the jury in any way in  
3 arriving at an impartial verdict as to the guilt or innocence  
4 of those accused.

5 Now, I permitted you to take notes during the trial.  
6 Your notes shall be used only as memory aids. You should not  
7 give your notes precedent over your independent recollection  
8 of the evidence. If you did not take notes, you should rely  
9 on your own independent recollection of the proceedings, and  
10 you should not be influenced by the notes of other jurors.

11 I emphasize that notes are not entitled to any  
12 greater weight than the recollection or impression of each  
13 juror as to what the testimony may have been.

14 This is the last instruction, your verdict:

15 Your verdict must represent the considered judgment  
16 of each juror. In other words, your verdict must be  
17 unanimous on each count.

18 Each of you must decide the case for yourself but  
19 only after an impartial consideration of all the evidence in  
20 the case with your fellow jurors.

21 It is your duty as jurors to consult with one  
22 another and to deliberate with a view to reach an agreement  
23 if you can do so without violence to your individual  
24 judgment. In the course of your deliberations, do not  
25 hesitate to reexamine your own views and change your own

1 opinion, if convinced it is erroneous. But do not surrender  
2 your honest conviction as to the weight or effect of the  
3 evidence solely because of the opinion of your fellow jurors  
4 or for the mere purpose of returning a verdict.

5 Remember, ladies and gentlemen, at all times you are  
6 not partisans. You are the judges. You are the judges of  
7 the facts. Your sole interest is to seek the truth from the  
8 evidence in the case.

9 Now, upon retiring to the jury room, you should  
10 first select one of your numbers, one of your members, to act  
11 as your foreperson who will preside over your deliberations  
12 and will be your spokesperson here in court.

13 Now, a special verdict form has been prepared for  
14 your convenience. You will take the exhibits and the verdict  
15 form to the jury room, and when you have reached unanimous  
16 agreement as to your verdict, you will have your foreperson  
17 fill it in, date it, sign the appropriate form, and then  
18 return it to the courtroom.

19 You'll just simply let the court security officer  
20 know that you have reached a verdict, and you hang onto that  
21 verdict until you come into the courtroom.

22 Now, the verdict form will list the counts of the  
23 indictment, and so you will be able to go right down and look  
24 at the counts and -- look at those counts as discussed and  
25 laid out in these instructions. Remember, I told you the

1 instructions are indexed, and when you go to Count One in the  
2 instructions, it will tell you what is charged, what needs to  
3 be proved, et cetera. You can walk through it that way.

4 Now, if, during your deliberations, you desire to  
5 communicate with the Court, your message or question must be  
6 put in writing and signed by the foreperson. You will fold  
7 it up, and then you will give it to the court security  
8 officer, who will bring it to the Court's attention.

9 If there's any space left on the piece of paper you  
10 send the Court, the Court may, after consulting with counsel,  
11 respond to you in writing to answer your question, and if  
12 necessary, the Court will bring you back in and address you  
13 from the courtroom, as you are sitting now.

14 If you do transmit a message or a question to the  
15 Court, you must not state or specify your numerical division  
16 at that time. The Court does not want to know who's for what  
17 and who's against what. That's your business.

18 Finally, you should not interpret anything the Court  
19 has said or done during the last five weeks as indicating or  
20 suggesting to you what your verdict should be or what the  
21 Court thinks. The verdict is exclusively your duty and your  
22 responsibility.

23 \* \* \* \* \*

CERTIFICATION

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Carol L. Naughton

May 26, 2021